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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/809,009	03/16/2001	Jean-Marc Ascione	05725.0634-00	5103

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EXAMINER

ELHILO, EISA B

ART UNIT PAPER NUMBER

1751

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/809,009

Applicant(s)

ASCIONE ET AL.

Examiner

Eisa B Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1 This action is responsive to the remarks filed on December 01, 2004.

2 The rejection of claims 1-6 and 8-65 under 35 U.S.C. 103(a) as being unpatentable over de la Mettrie et al. (US 5,989,295) in view of (XP-000934522), is maintained for the reasons set forth in the previous office action mailed on 07/28/2004.

3 The rejection of claim 7 under 35 U.S.C. 103(a) as being unpatentable over de la Mettrie et al. (US 5,989,295) in view of (XP-000934522) and further in view of Hutchins et al. (US 5,830,447), is maintained for the reasons set forth in the previous office action mailed on 07/28/2004.

Response to Arguments

4 Applicant's arguments filed 12/1/2004 have been fully considered but they are not persuasive.

With respect to the rejection under 35 U.S.C. 103(a) based upon de la Mettrie et al. (US' 295) in view of (XP-522), Applicant argues that there is no motivation or suggestion to combine the references.

The examiner respectfully disagrees with the above argument because the primary reference of de la Mettrie et al. (US' 295) clearly suggests that other anionic amphiphilic polymers formed from a mixture of monomers may be used in the composition (see col. 4, lines 25-65). (XP-522) as a secondary reference clearly suggests the use of Acrylates/Methacrylates/Beheneth-25 Methacrylate Copolymer in dyeing formulation to offer more than one function such as thickening, stabilizing, suspension of ingredients and also to act as a clear gallant and as a polymeric emulsifier in the composition (see page 1,5th paragraph).

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Therefore, there is a sufficient motivation to one having ordinary skill in the art to incorporate the Acrylates/Methacrylates/Beheneth-25 Methacrylate Copolymer in the dyeing composition with a reasonable expectation of success for improving the performance of the composition. Therefore, a prima facie case of obviousness has been established.

Applicant further argues that the addition of Aculyn 28 into the oxidative dye composition of de la Mettrie (US' 295) might destroy the already existing stability of the composition without establishing a new stable composition.

The examiner respectfully disagrees with the above argument because the applicant has not provided a data or showing to demonstrate that the addition of Acrylates/Methacrylates/Beheneth-25 Methacrylate Copolymer (Aculyn 28) in the dyeing composition of de la Mettrie et al. (US' 295) may destroy the stability of the composition. Therefore, a prima facie case of obviousness has been established in the absence of contrary.

With respect to the rejection under 35 U.S.C. 103(a) based upon de la Mettrie et al. (US' 295) in view of (XP-522) and further, in view of Hutchins et al. (US 5,830, 447), Applicant argues that there is no motivation or suggestion to combine the references.

The examiner respectfully disagrees with the above argument for the same reasons as mentioned above.

5 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
February 3, 2005



Mark Kopec
Primary Examiner